

9 FAM 42.80 REFUSAL, REVOCATION, AND TERMINATION OF REGISTRATION

9 FAM 42.81 Procedure in refusing individual visas.

(TL:VISA-168; 08-08-1997)

(a) Issuance or refusal mandatory.

(TL:VISA-10; 4-5-88)

When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer shall either issue or refuse the visa. Every refusal shall be in conformance with the provisions of 22 CFR 40.6.

(b) Refusal procedure.

(TL:VISA-10; 4-5-88)

A consular officer may not refuse an immigrant visa until Form OF-230, Application for Immigrant Visa and Alien Registration, has been executed by the applicant. When an immigrant visa is refused, an appropriate record shall be made in duplicate on a form prescribed by the Department. The form shall be signed and dated by the consular officer. The consular officer shall inform the applicant of the provision of law or implementing regulation on which the refusal is based and of any statutory provisions under which administrative relief is available. Each document related to the refusal shall then be attached to Form OF-230 for retention in the refusal files. Any document not related to the refusal shall be returned to the applicant. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates an intention to submit such evidence, all documents may, with the consent of the alien, be retained in the consular files for a period not to exceed one year. If the refusal has not been overcome within one year, any documents not relating to the refusal shall be removed from the file and returned to the alien.

(c) Review of refusal at consular office.

(TL:VISA-3; 8-30-87)

If the grounds of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the principal consular officer at a post, or a specifically designated alternate, shall review the case without delay, record the review decision, and sign and date the prescribed form. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates the intention to submit such evidence, a review of the refusal may be deferred. If the principal consular officer or alternate does not concur in the refusal, that officer shall either (1) refer the case to the Department for an advisory opinion, or (2) assume responsibility for final action on the case.

(d) Review of refusal by Department.

(TL:VISA-3; 8-30-98)

The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if an immigrant visa has been refused. The Department will review each report and may furnish an advisory opinion to the consular officer for assistance in considering the case further. If the officer believes that action contrary to an advisory opinion should be taken, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, are binding upon consular officers

(e) Reconsideration of refusal.

(TL:VISA-10; 4-5-88)

If a visa is refused, and the applicant within one year from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, the case shall be reconsidered. In such circumstances, an additional application fee shall not be required.

9 FAM 42.81 Related Statutory Provisions

INA 212(b)

(TL:VISA-168; 08-08-1997)

For the provisions of INA 212(b) see 9 FAM 41.121 Related Statutory Provisions .

INA 221(g), in part

(TL:VISA-168; 08-08-1997)

No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 212, or any other provision of law, (2) the application fails to comply with the provisions of this Act, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 212, or any other provision of law: *Provided*, That a visa or other documentation may be issued to an alien who is within the purview of section 212(a)(4), if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney General of the giving of a bond or undertaking providing indemnity as in the case of aliens admitted under section 213:....

[Amended by sec. 603(a)(9) of Pub. L. 101-649, Nov. 29, 1990]